

TITLE 6 - CHAPTER 10-A. ADDITIONAL DEFAULT REMEDIES

Current through 2006 Regular Session Acts

§965. Scope and definitions

A. This Chapter may be cited as the "Additional Default Remedies Act".

B. This Chapter provides additional remedies on default by the debtor under a secured transaction under Chapter 9 of the Louisiana Commercial Laws, R.S. 10:9-101 et seq., R.S. 9:5351 et seq., R.S. 9:5367 et seq., and R.S. 32:701 et seq., as applicable, entitling the secured party to obtain possession and dispose of the collateral as provided herein. These remedies shall be in addition to all other remedies applicable to nonpossessory security interests affecting collateral in which a security interest or chattel mortgage, as applicable, has been granted, which shall remain available and in full force and effect in their entirety.

C. As used in this Chapter, the following terms shall have the following meanings:

(1) "Breach of peace" shall include but not be limited to the following:

(a) Unauthorized entry by a reposessor into a closed dwelling, whether locked or unlocked.

(b) Oral protest by a debtor to the reposessor against repossession prior to the reposessor seizing control of the collateral shall constitute a breach of the peace by the reposessor.

(2) "Collateral" shall refer to "motor vehicles" and shall have the meaning set forth in R.S. 32:1252(13).

(3) "Debtor" shall have the meaning set forth in R.S. 10:9-105(d).

(4) "Default" means nonpayment of two consecutive payments on the date due. In the event that payments are required to be made more frequently than on a monthly basis, "default" shall mean nonpayment for a period of sixty days.

(5) "Secured party" shall have the meaning set forth in R.S. 10:9-102(a) and shall also mean a lessor of a motor vehicle as defined in R.S. 9:3306.

D. Beginning on or after January 1, 2005, the secured party seeking to utilize the remedies provided herein shall include the following in its security agreement:

"Louisiana law permits repossession of motor vehicles without judicial process."

§966. Procedure

A.(1) The procedures set forth in this Chapter may be used to obtain possession and dispose of collateral following default by a debtor without previous citation and judgment to enforce a security interest evidenced by a security agreement or a lease.

- (2) Prior to the use of the procedures set forth in this Chapter, a secured party shall send notice to all debtors in writing at the last known address of the debtors, of the right of the secured party to take possession of the collateral without further notice upon default as defined in R.S. 6:965(C). Such notice shall include the debtor's name, last known address, and description of the collateral and the following in at least twelve-point type:

"Louisiana law permits repossession of motor vehicles upon default without further notice or judicial process."

(3) After obtaining possession of the collateral, the secured party may dispose of it in any manner permitted by Chapter 9 of the Louisiana Commercial Law, R.S. 10:9-101 et seq. or by resort to available judicial procedures, and may cause the collateral to be retitled. Unless the secured party causes the collateral to be sold at judicial sale under ordinary or executory process, all receipts from the secured party's disposition of the collateral shall be applied as set forth in R.S. 10:9-601, and the secured party shall be obligated to account to the debtor for any surplus.

B. Unless otherwise agreed, a secured party has, on default, the right to take possession of the collateral. In taking possession, a secured party may proceed without judicial process if this can be done without a breach of the peace or may proceed by other remedies available by law.

C. The provisions of this Section may be utilized only by the following:

(1) Financial institutions chartered under the laws of the state of Louisiana, another state, or the United States.

(2) Persons licensed or regulated as lenders by the commissioner of financial institutions pursuant to the Louisiana Consumer Credit Law, R.S. 9:3510 et seq.

(3) Persons licensed or regulated as lenders by the Louisiana Motor Vehicle Commission pursuant to the Louisiana Motor Vehicle Sales Finance Act, R.S. 6:969.1 et seq.

D.(1)(a) Any individual who physically obtains possession of the collateral pursuant to this Chapter shall obtain a repossession agent license from the Office of Financial Institutions.

(b) On or before January 1, 2005, the commissioner of financial institutions shall issue licenses to repossession agents who are members of the following organizations: National Finance Adjusters, Inc., Allied Finance Adjusters Conference, Inc., Time Adjusters Conference, Inc., or the American Recovery Association, Inc., or a Louisiana association of

duly licensed repossession agents recognized as a viable association by the commissioner of financial institutions, and who meet any additional qualifications for licensure established by the commissioner of financial institutions pursuant to rules and regulations adopted in accordance with the Administrative Procedure Act.

(2) In the event a tow truck, as defined in R.S. 32:1713, is required to be used in the repossession, the provisions of Chapter 16 of Title 32 of the Louisiana Revised Statutes of 1950 pertaining to said tow truck shall apply. The tow truck owner or operator, as defined in R.S. 32:1713, shall possess a common carrier certificate issued by the Louisiana Public Service Commission pursuant to R.S. 45:164.

E. The secured party shall have and retain all of the possessory and enforcement rights provided under Chapter 9 of the Louisiana Commercial Laws, R.S. 10:9-101 et seq., including the right to recover a deficiency or any other costs associated with the seizure proceeding provided for in this Chapter.

F. If the debtor has personal property of his own or of another inside the repossessed collateral, the owner of the personal property shall have ten days in which to contact the repossessing creditor and demand the return of his property. The secured party shall immediately return the personal effects upon request of the debtor. At the end of thirty days following the repossession of the collateral, the personal effects located inside of the repossessed collateral shall be deemed abandoned and the secured party shall no longer be responsible for such personal effects.

§966.1. Notice of repossession; contents; fees

A. Within three days of taking possession of collateral, a secured party who utilizes the additional default remedies provided by this Chapter to obtain possession of collateral shall file a "Notice of Repossession" with the recorder of mortgages in the parish where the collateral was located and with the appropriate official. The "Notice of Repossession" shall contain the debtor's name, last known address, date of birth, and a description of the collateral repossessed. For purposes of this Section, the appropriate official shall be:

(1) The constable of the justice of the peace court, if the debtor's last known address is within the election district of the justice of the peace court and the outstanding balance is within the jurisdictional limits of the court.

(2) The constable or marshal of the city court, if the debtor's last known address is within the geographic boundaries of the city court and the outstanding balance is within the jurisdictional limits of the court.

(3) The sheriff for the parish of the debtor's last known address, if there is no other appropriate official as defined in this Subsection.

B. The secured party shall pay seventy-five dollars to the recorder of mortgages and two hundred fifty dollars to the appropriate official for each "Notice of Repossession" filed.

C. If the sheriff is the appropriate official in a parish having a population in excess of four hundred sixty-five thousand persons, as determined by the most recent federal decennial census, then there shall be no fee paid to the sheriff; however, the "Notice of Repossession" shall still be filed with the sheriff.

D. The commissioner of financial institutions shall have the authority to promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Chapter, including but not limited to establishing fees and assessments.

§967. Appeal from order

A suspensive appeal shall not be granted unless the debtor has answered the rule pleading that the debt was paid or extinguished, or that the debt or security interest is otherwise unenforceable, and the appeal has been applied for and the appeal bond filed within twenty-four hours after the issuance of the order.